

From: Lee E. Helfrich [helfrich@lnllaw.com]
Sent: Thursday, October 23, 2003 8:02 AM
To: Gebhardt, Sharron
Cc: Gibbs Tschudy, Deborah; Hank Banta (E-mail); Vogel, Kenneth;
Querques Denett, Lucy; M L (E-mail); Marty Lobel (E-mail)
Subject: Technical amendments to oil valuation rule

Dear Ms. Gebhardt:

I am writing on behalf of the California State Controller's Office. As you know, since the Minerals Management Service announced its intention to make "technical" corrections to the federal oil valuation rules (February 2003), I have been trying to access from the Service any information that might help explain or detail the assertions that MMS's "experience" suggested a need for amendments. Unfortunately, the material provided to me so far does not suggest that any changes are needed. The material provided also has not provided any foundation for assuming agency expertise in the implementation or evaluation of the effectiveness of the oil rules, which became operational in June 2000.

I recently learned that during the month of July 2003, the MMS proposal was under review by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA). This is recounted in the 7/29/03 affidavit of MRM's Cathy J. Hamilton, which was filed in connection with a status report to the court in IPAA v. Baca, No. 00-761 (RCL). That affidavit states that MMS, pursuant to Executive Order 12866, forwarded a draft to OMB for approval, that OMB returned the proposal with comments, which led to a revised draft to OMB. Ms. Hamilton's affidavit was apparently prepared before OMB cleared the rule.

As you know, federal agencies submit other types of explanatory documentation to OIRA with draft proposed rules. The documentation surrounding OMB approvals and inter-agency communications are spelled out in considerable detail in Section 6 of the Executive Order. We would appreciate receiving access to all of that material, and particularly the material relating to the OMB comments that led MMS to make revisions.

Finally, as I'm sure you know, under Executive Order 12866, OMB reviews only those agency proposals that have been designated as "significant regulatory actions". That phrase is defined in Section 6(f) of the Order to include rules that may:

- "1. Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive

order."

It is somewhat obvious the definition above is out of sync with MMS's repeated reference to its proposal as involving "technical" changes. Accordingly, would you please provide: (a) any and all information and communications that would identify whether MMS or OIRA made the determination that the oil valuation proposal was a "significant regulatory action," (b) any and all information that would explain which of the Executive Order's definitional categories applied to the oil valuation proposal, and (c) any other relevant information that would explain the basis and purpose of the Hamilton affidavit and the need for OMB/OIRA review.

Thank you.

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